IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 47 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAYURDHWAJSINHJI

Versus

COMMISSIONER OF WEALTH-TAX

Appearance:

1. WEALTH TAX REFERENCE No. 47 of 1985
MR JP SHAH for Petitioner
MR AKIL KURESHI with MR MANISH R BHATT for Respondent

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 05/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

The Income Tax Appellate Tribunal, Ahmedabad

Bench `A' has referred the following two questions for the opinion of this Court :-

"(1) Whether, on the facts and in the circumstances of the case, the Hon'ble Tribunal was right in law in holding that Darbargadh was an impartible estate and that the assessee was the holder of that estate under section 4(6) of the Wealth-tax Act ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in directing the Wealth-tax Officer to include the same value of Darbargadh in the total wealth of the assessee when the valuation is under challenge by the assessee ?"

2. The assessment years involved are 1966-67 to 1971-72 and the relevant valuation dates are 31.3.1966 to 31.3.1971 respectively.

3. The assessee who is an individual claimed before the Wealth Tax Officer that the value of the building known as `Darbargadh City Palace' should not be included in his net wealth in view of the fact that as per the terms of the covenant which was entered into with the then Government of United States of Kathiawar, the said property was belonging to the family and not the assessee as an individual. The Wealth Tax Officer did not accept the contention of the assessee and included the value of the aforesaid property in the hands of the individual.

4. The Commissioner of Wealth-tax (Appeals) followed the decision of the Tribunal in the assessee's own case for assessment years 1959-60 to 1965-66 and held that as the title of the property vested in the Dynasty and the assessee as the Ruler was only entitled to the use of the property the value of the said property was not includible in the net wealth of the assessee.

5. The revenue carried the matter in appeal before the Tribunal and the Tribunal by its order dated 29.12.1980 held that in light of the Bombay High Court decision in the assessee's own case, the value of the building known as `Darbargadh' had to be included in the net wealth of the assessee for each of the assessment years in question. The reasons which weighed with the Tribunal for arriving at this decision were that there was nothing to distinguish the assessee's own case from

the earlier years especially assessment year 1965-66 for which the Bombay High Court had held in the assessee's own case that the property in question was a impartible estate and hence the provisions of Section 4(6) of the Wealth Tax Act, 1957 (hereinafter referred to as `the Act') were applicable to the facts of the case. Secondly, the Tribunal was of the view that in light of the relevant part of the formula relating to Darbargadh, which was evolved in terms of the covenant, the property was an impartible estate and it was not possible to take any other view of the matter.

6. Mr JP Shah, learned counsel for the assessee-applicant has based his case on the provisions of Section 4 read with Section 5(ii) of the Hindu Successions Act, 1956 to submit that the assessee was in occupation of the Darbargadh property by virtue of the terms of the covenant and that the said covenant did not relate to an estate which had descended to a single heir. It was, therefore, urged that the property in question was belonging to the Hindu Undivided Family of the assessee and not to the assessee as an individual and hence, the provisions of Section 4(6) of the Act were not applicable. In support of his submissions, reliance was placed on the decision of this Court in the case of Pratapsinhji N. Desai vs. CIT, 139 ITR 77.

7. As against this, Mr Akil Kureshi, learned Standing Counsel appearing on behalf of the revenue supported the order of the Tribunal by referring to and relying upon the Bombay High Court decision in the assessee's own case in the case of CWT vs. H.H. Maharaja Mayurdhwaj Singhji, 136 ITR 279. Mr Kureshi has submitted that the nature of the property was impartible and there was no dispute as to the said fact because, according to him, even as per the terms of the covenant, the property in the hands of the assessee was received as a sovereign property. It was further submitted that once the nature of the property was ascertained, its character would not change and if that be so, the provisions of Section 4(6) of the Act would come into play; that the said provisions were in the nature of a legal fiction and if the basic facts existed, the fiction must be permitted to operate. Mr Kureshi also referred to a decision in the case of Pratap Singh vs. Sarojini Devi, 1994 Supp.(1) SCC 734 for the purpose of submitting that the rule of primogeniture was held to continue even after 1947-48 and in that context the estate which was held by the assessee was impartible in nature and the provisions of Section 4(6) of the Act would apply.

We shall deal with the said contention of Mr Kureshi slightly later on but at this juncture, we may state that the reliance on the aforesaid decision of the Apex Court would not carry the case of the revenue any further in as much as the Apex Court was not called upon to deal with the controversy with which we are required to deal with. The dispute before the Apex Court was in relation to the nature of the property purchased by one of the parties in the name of his friend and whether in such circumstances the said property could be belonging to the said assessee as a sovereign property or as a private property.

8. It is pertinent to note that the Bombay High Court in the assessee's own case had held that the impartible property cannot be treated as the personal property of the assessee before sub-section (6) was introduced in Section 4 of the Act, but it was a joint family property and hence the value of the said property cannot be included for wealth-tax purposes in the hands of the assessee for the assessment years prior to 1965-66. However, the Bombay High Court held that in view of the amended provision of Section 4(6) of the Act which became effective from 1.4.1965, the Darbargadh Palace would have to be included as part of the net wealth of the assessee because, according to Bombay High Court, the property had to be included artificially as provided by the legislature.

9. When the aforesaid decision was rendered by the Bombay High Court, the decision in case of Pratapsinhji (Supra) had not been rendered by this Court. In the aforesaid case of Pratapsinhji (Supra), this Court was called upon to decide the controversy in light of the provisions of Section 27(ii) of the Income Tax Act, 1961. The relevant extract of the said provisions as is material for our purpose reads as under :-

> "27. For the purposes of sections 22 to 26 -
> (ii) the holder of an impartible estate shall be deemed to be the individual owner of all the properties comprised in the estate;"

In so far as the provisions of Section 4(6) of the Act are concerned, they read as under :-

> "4(6) For the purposes of this Act, the holder of an impartible estate shall be deemed to be the individual owner of all the properties comprised in the estate."

Therefore, on a comparison of the provisions of both the Acts, namely the Income Tax Act and the Wealth Tax Act, it is apparent that an identical fiction is provided by the legislature that in case where a person is the holder of an impartible estate, such a person shall be deemed to be the individual owner of the properties comprised in such estate.

10. In the case of Pratapsinhji (Supra), this Court has taken into consideration the effect of Section 4 read with Section 5(ii) of the Hindu Succession Act, 1956 to hold that any custom or usage which enjoins the devolution of an estate on a single heir is not effective except in those cases where such descent is provided by the terms of any covenant or agreement entered into by a Ruler of an Indian State with the appropriate Government before commencement of the Hindu Successions Act. That an estate which is impartible by custom cannot be said to be the separate or the exclusive property of the holder of the estate. That the fiction of law provided under Section 27(ii) of the Income Tax Act, 1961 will not operate in cases where the estate lost its characteristic of being impartible as there is no provision to warrant that it should be treated as a separate or an individual property of the holder.

11. In the present case, in terms of the covenant entered into by the father of the assessee, the Rajpramukh was entitled to enter into consultation with the Ruler, prepare an inventory of the properties and the decision had to be taken at the conference as to the nature of the properties included in the inventory. The letter dated 19/21.2.1949 from the Rajpramukh addressed to the assessee is available at page 62 of the paper book and Appendix `B" being part of that letter is available at page 70 of the paper book (Annexure "D"). The relevant extract dealing with the Darbargadh property reads as under :-

"3. When the Ruler has a Darbargadh or Darbargadh in addition to his own Palace, then his title to and use of them should, in my view be settled in the following manner.

(a) The legal title should always vest with the Dynasty of the Ruler and the property shall be inalienable and impartible."

Therefore, it is apparent that the legal title of the property vested in the Dynasty and as per the terms

of the covenant, the property did not devolve upon a single heir as required by the provisions of Section 5(ii) of the Hindu Succession Act, 1956. For the purpose of saving the property from losing its characteristics by operation of Section 4 of the Hindu Succession Act, 1956, in the case of Pratapsinhji (Supra), this Court has specifically laid down that unless, therefore, a particular estate, the devolution of which is to a single heir, is saved and excepted under Section 5(ii) of the Hindu Succession Act, it cannot be claimed successfully that that estate continues to be impartible.

Hence, the position is that as per the terms of the covenant, the property in question was granted to the Dynasty and not to the assessee as a single heir. That by operation of the provisions of Section 4 of the Hindu Succession Act, such property lost its characteristic of being an impartible estate and thus it did not fulfil the description of the property which could be brought within the purview of the provisions of Section 4(6) of the Act. We, therefore, hold that the Tribunal was not right in law in holding that Darbargadh was an impartible estate and that the assessee was the holder of such estate under Section 4(6) of the Act.

12. The first question referred to us is, therefore, answered in the negative i.e. in favour of the assessee and against the revenue. In light of our answer to the first question, it is not necessary to answer the second question. Hence, we decline to answer the same.

The reference is disposed of accordingly with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

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